

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JASBIR SINGH TIWANA, M.D.,

Physician's and Surgeon's Certificate
No. A105298,

Respondent.

Case No. 800-2014-005022

OAH No. 2016060163

DECISION AFTER NON-ADOPTION

Administrative Law Judge Ralph B. Dash heard this matter on November 16, 2016, in Los Angeles, California.

Wendy L. Widlus, Deputy Attorney General, represented Kimberly Kirchmeyer (Complainant), Executive Director of the Medical Board of California (Board).

Frederick M. Ray, Attorney at Law represented Jasbir Singh Tiwana, M.D. (Respondent).

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision. Panel B of the Board declined to adopt the Proposed Decision and on February 6, 2017, issued an Order of Non-Adoption and invited written argument of the appropriate level of discipline to be ordered. Both parties having submitted written argument and offered oral argument on April 27, 2017, the Panel, having read and considered the entire administrative record, hereby makes and enters the following as its decision in the above-captioned matter.

FINDINGS OF FACT

1. Complainant made the Accusation in her official capacity
2. The Board issued Physician's and Surgeon's Certificate number A 105298 to Respondent on August 20, 2008. At all times relevant hereto, the certificate was, and is now, in full force and effect. It has been renewed through August 31, 2018.

3. On November 18, 2014, in the Superior Court of the State of California, County of Ventura, case number 201408122 M A, Respondent was convicted on his plea of guilty to one count of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content of 0.08 percent or higher, a misdemeanor. The Court suspended imposition of sentence and placed Respondent on formal probation for three years on condition that, among other things, he serve two days in the County Jail, less credit for two days served, that he pay fines and fees totaling \$3,923.36, and that he enroll in and complete a treatment program as directed by his probation officer. Respondent was required to, and did, enroll in and complete a first offender alcohol program. Because he satisfactorily complied with the terms of his formal probation, Respondent's probation was changed from formal to conditional and revocable release as of March 5, 2015.

4. The facts and circumstances of the crime are that on the evening of March 15, 2014, Respondent attended a family party where he consumed "two large glasses of wine." As Respondent was driving home on the freeway, an officer noticed Respondent's car drift from one lane to another at least twice. As Respondent exited the freeway, the officer pulled him over. The officer noticed that Respondent had red watery eyes and emanated an odor of alcohol. The officer had Respondent perform some field sobriety tests and then had him give two breath samples which showed that his blood alcohol content was 0.11 percent.

5. As more fully set forth below, Respondent, who is board certified in internal medicine, is not an alcoholic nor does he have a substance abuse disorder. This is his first and only conviction for any type of alcohol-related incident. He was extremely remorseful for his conduct, calling his arrest and being taken to jail "the worst experience I've ever had." He has not consumed any alcoholic beverages since the night of his arrest and plans never to drink again. At the hearing of this matter, he was soul-searchingly honest in his admission of the poor judgment he had used in driving after consuming alcohol. Respondent, a hospitalist at Los Robles Hospital and Medical Center (Los Robles), was on call the evening of his arrest. He stated that he would have been able to, and would have in fact, turned over any calls he may have gotten to another doctor in his group.

6. On September 17, 2016, Richard S. Sandor, M.D., a board certified psychiatrist with a Certificate of Added Qualification in Addiction Psychiatry, evaluated Respondent. In addition to interviewing Respondent for 60 minutes, Dr. Sandor, who is very well-known and highly respected in his field, also reviewed the Accusation, court records, an interview Respondent gave to a Board investigator, and letters from several of Respondent's colleagues. He prepared a written report (Exhibit F), finding that Respondent showed no pathology. Dr. Sandor testified in accordance with his report which reads, in part, as follows:

Dr. Tiwana pled guilty to and was convicted of driving with a blood alcohol level of over 0.08% on November 18, 2014. He voluntarily notified the MBC of his conviction, and cooperated fully with the MBC investigation on September 29, 2015. [¶ . . .]

Dr. Tiwana denies ever having had any previous problems with drinking and

driving. In fact, he has had no problems of any kind related to alcohol - no other legal problems, no medical problems, no professional problems, and no family/relationship problems. He reports that prior to his arrest, he drank alcohol only rarely, and that since his arrest, he has been entirely abstinent from alcohol. His letters of reference from colleagues and friends indicate that he has been completely reliable and is highly regarded. ¶ . . . ¶

Dr. Tiwana has had no psychiatric treatment nor has he been diagnosed with any psychiatric disorders. He denied ever having experienced any of the common symptoms associated with psychiatric disorders (depression, anxiety, insomnia, etc.). He does not take any psychotropic medications. Dr. Tiwana has been generally quite healthy. He takes no medications regularly. He did have sinus surgery in 2004 which helped relieve a condition of chronic sinusitis. He occasionally takes an over-the-counter preparation for seasonal allergies. The lab studies performed on June 3, 2016, reveal normal liver enzymes and normal mean red blood cell volume--tests which are often abnormal in heavy drinkers and alcoholics. ¶ . . . ¶

Dr. Tiwana came to my office as scheduled. He was dressed and groomed neatly and appropriately. He made good eye contact, and there were no abnormalities of speech or movement. He was friendly and fully cooperative. He described feeling ashamed at having driven his car while under the influence of alcohol and expressed, at least in my perception, genuine feelings of remorse for his lapse of judgement. ¶ . . . ¶

The question put to me is the same one that the Medical Board of California must consider in its deliberations concerning Dr. Tiwana's medical license - does he have a substance use disorder and therefore is he a risk to the public? In summary, and put simply, I do not believe Dr. Tiwana has such a disorder. . . . [T]here is no evidence from any other part of his life that he chronically makes bad decisions or acts irresponsibly. He fully acknowledges his error and has accepted the consequences meted out by the criminal justice system. There is simply no other evidence from any area of his life which suggests that he suffers from any substance use disorder. On the contrary, his colleagues' letters portray a man of excellent character and competence. ¶ . . . ¶

Strictly speaking, the diagnosis of "alcohol use disorder" as defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM-now version V), describes "a problematic pattern of substance use which results in clinically significant impairment or distress." The DSM then lists 11 criteria [of] such problems and indicates that for the diagnosis to be made, two or more of these problems must be present within a 12 month period. Dr. Tiwana's single arrest for DUI meets none of these criteria. Dr. Tiwana denies having experienced any of the subjective criteria for an alcohol use disorder ("craving"; "a desire to cut down or control alcohol use"; "using more alcohol or for a longer period of time than was intended"), and there is no evidence to support the idea that

he has exhibited any of the objective signs of this disorder (“a great deal of time spent in obtaining the substance or recovering from its use”; “failure to fulfill major role obligations at work, school, or home; giving up or curtailing important social, occupational, or recreational activities because of alcohol use”; “continued alcohol use despite knowledge that it will exacerbate an ongoing psychological or physical problem”). Dr. Tiwana also denies ever having experienced the last two criteria for the diagnosis of an alcohol use disorder - tolerance and withdrawal.

Of course, one of the difficulties in performing evaluations of an individual who may have a substance use disorder is that alcoholics and drug addicts often deny or minimize their use of substances and the consequences thereof. But it is also true that individuals who do not have a substance use disorder deny that they use excessively or that they have experienced negative consequences to their use. That’s because they don’t and haven’t. And in those cases, their “denial” does not represent a refusal to face reality, but a statement of truth. This is the great value of independent sources of information (called “collateral sources”) among those who are charged with performing these evaluations. They represent more or less objective observations untainted by the subject individual's desire to modify or otherwise distort their history. The glowing reports of Dr. Tiwana’s professional activities from colleagues who have been in a position to observe his behavior very carefully is robust evidence that his DUI was an anomaly and not a sign of an underlying alcohol use disorder. ¶ . . . ¶

Among physicians who become alcoholics, we characteristically see individuals who fail to keep or cancel appointments at the last moment (and often produce excuses which become less and less credible over time), appear at offices or clinics at unscheduled hours, fail to keep adequate medical records, make rounds at hospitals at unusual hours, and so on. As the disorder progresses, colleagues and ancillary staff begin to complain of the doctor's unreliability, and there may even be instances of complaints that the doctor has alcohol on his or her breath. We see none of these patterns in Dr. Tiwana's history. In fact, his colleagues’ letters describing Dr. Tiwana's behavior and professional work show absolutely nothing like what we expect to see in the development of an alcohol use disorder.

7. As Dr. Sandor noted, Respondent is well-liked and highly admired by his peers. In fact, Respondent’s skill and reputation are such that he has been elected Chairman of Medicine for 2017 to 2019 at Los Robles. Pedram Bagheri, M.D., wrote a letter on Respondent’s behalf (Exhibit 15) and also testified. His testimony was consistent with his letter, which contains the following passage:

Over the years working with Dr. Tiwana, I have seen nothing but relentless drive and honorable work ethic that has placed him amongst some of the most well liked and respected physicians at Los Robles Hospital. He has made

himself available to cover consecutive shifts on call during times that other team members have needed to call off, due to either personal or health reasons. Dr. Tiwana takes great pride and enjoyment from each relationship that he builds with our sick and vulnerable patients. I have heard nothing but praise and appreciation from my patients that have interacted with him.

8. Stephen Reidy, M.D., is Chief of Staff of Los Robles. He wrote a letter on Respondent's behalf (Exhibit H) which is particularly significant to this matter in light of Dr. Sandor's statement of the importance of colleagues being reporters of Respondent's sobriety. Dr. Reidy wrote, in part, "I am keenly familiar with [Respondent's] current circumstances. Dr. Tiwana has been on our staff since 2009 and has been a valued member of this medical community since that time. Dr. Tiwana and I have worked together for more than 5 years and I have served alongside him on a number of hospital committees. Through this duration, there has never been a situation in which Dr. Tiwana was impaired or where a patients' care was compromised due to an indiscretion on his part. Given that we service a fairly small medical community, any information to the contrary would have been revealed and publicized and I can assure you that it has not."

9. Gurdip S. Flora, M.D., a Diplomate of the American Board of Internal Medicine, with an added certification in pulmonary disease, has known Respondent for 15 years and is well aware of Respondent's conviction. He wrote a letter on Respondent's behalf (Exhibit G) which extolled Respondent's virtues as a kind, caring and exceedingly knowledgeable doctor. He ended his letter with the following passage: "He possesses knowledge, judgment, adaptability, technical education and personal characteristics to carry out the efficient and top quality practice of medicine. . . . I along with other members of the medical community support [him] as being exemplary in terms of his character, his dealings with the community and the institutions he is partnered with. There is no doubt in my mind that this well-rounded young physician is beyond reproach and is a fine, learned, compassionate, efficient, and skilled member of the Ventura County community."

10. Respondent offered a number of letters and emails from patients and hospital staff (Exhibit I), all of which praised Respondent. There is no need to quote from each letter. The following, from a patient, is typical, "Just wanted to provide some positive feedback regarding Dr. Tiwana. He is the best and on top of his patients. He keeps us well informed and great bedside manners with the patient and family. One of the best hospital doctors that we have dealt with!!!!!!!!!!!!!!!!!!!!!!"

LEGAL CONCLUSIONS

1. The standard of proof in the matter of the discipline of a certificate of a physician and surgeon is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal--so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. Cause exists to discipline Respondent's certificate, pursuant to Business and Professions Code sections 2234, subdivision (a) and 2236, subdivision (a), and California Code of Regulations, title 16, sections 490 and 1360, in that Complainant established by clear and convincing evidence that Respondent has been convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon, as set forth in Findings 3 and 4.

3. Cause exists to discipline Respondent's certificate, pursuant to Business and Professions Code sections 2234, subdivision (a) and 2239, and California Code of Regulations, title 16, section 1360, in that Complainant established by clear and convincing evidence that Respondent used alcoholic beverages to an extent or in a manner dangerous to himself, another person, or the public, as set forth in Factual Findings 3 through 5.

4. Complainant established that cause for discipline exists, and the Board must acknowledge, to both the public and the medical community, that Respondent's actions on March 15, 2014, were not in compliance with the Business and Profession Code. A conviction for driving under the influence of alcohol shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770.) The question is the nature of the discipline to be imposed against Respondent's certificate.

5. Business and Professions Code section 2229, provides, in pertinent part:

(a) Protection of the public shall be the highest priority for the Division of Medical Quality, . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.

(b) In exercising his or her disciplinary authority an administrative law judge of the Medical Quality Hearing Panel, [or] the division, . . . shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee. . . .

6. Code section 2227, subdivision (a), provides:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, . . . and who is found guilty, or who has entered into a stipulation for disciplinary action with the division, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the division.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.

(3) Be placed on probation and be required to pay the costs of

probation monitoring upon order of the division.

(4) Be publicly reprimanded by the division.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the division or an administrative law judge may deem proper. (Emphasis added.)

7. According to the criteria set forth in California Code of Regulations, title 16, section 1360.1, Respondent has established rehabilitation, as set forth in Factual Findings 6 through 10.

8. Pursuant to California Code of Regulations, title 16, section 1360.1:

When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license, certificate or permit shall consider the following criteria:

(a) The nature and severity of the act(s) or offense(s).

(b) The total criminal record.

(c) The time that has elapsed since commission of the act(s) or offense(s).

(d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

9. On March 15, 2014, Respondent made a single error which resulted in a misdemeanor conviction for driving with a blood alcohol content of 0.08 percent or higher. Only an occasional drinker, he consumed alcoholic beverages at a family party and then attempted to drive home safely. The deleterious effect of the alcohol clouded Respondent's judgment as to his ability to drive home. Respondent had never before engaged in such conduct, and he has not done so since. He was devastated by his misconduct on that singular occasion, and was equally devastated by the prospect of it sully a hard-earned career.

10. Respondent has complied with all terms and conditions of probation, but is scheduled to remain on probation until November 17, 2017. He no longer consumes alcoholic beverages. Respondent's conviction is an anomaly in his otherwise law-abiding life, and his commitment to continued abstinence suggests that recidivism is highly unlikely. Aside from the single misdemeanor conviction, Complainant presented no evidence of any impediments to Respondent's ability to practice medicine in a proper and safe manner.

11. Nevertheless, some type of discipline is appropriate to ensure that Respondent's professional life remains as untainted as it was before his crime. Business and Professions Code section 2227 does not limit the Board to imposing revocation, suspension or probation. Although the Board's scope of discipline includes those remedies, it also includes issuance of a public reprimand, pursuant to Business and Professions Code section 2227, subdivision (a)(4).

This provision of law also allows educational courses to be coupled with the reprimand. Respondent's decision to consume alcohol while on-call (even with the 'mobile phone smart application') and his interaction with California Highway Patrol officer were concerning to the Panel. Accordingly, the Panel is persuaded that a professionalism (ethics) course and an alcohol awareness course coupled to the reprimand will enhance public protection and foster Respondent's understanding of a physician and surgeon's need for professional judgment.

12. Case law establishes that the purpose of a disciplinary action such as this one is to protect the public, and not to punish the licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) While some form of discipline is warranted to ensure public safety and awareness, in this case, neither revocation nor Board oversight via probation is appropriate. License revocation or suspension would be unduly punitive, and the probation conditions set forth in the disciplinary guidelines (e.g., evaluations, biological fluid testing, and group support meetings) are unnecessary under the circumstances presented here. In light of Respondent's single conviction and the rehabilitative evidence proffered at the hearing, a public reprimand with educational courses, will best protect the public without imposing overly harsh and punitive discipline on Respondent.

ORDER

Respondent, Jasbir Singh Tiwana is hereby reprimanded under Business and Professions Code section 2227, subdivision (a)(4) and required to successfully complete the following educational coursework:

1. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent.

Respondent shall successfully complete the classroom component of the program not later than six (6) months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

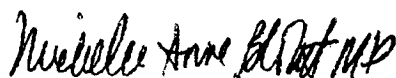
2. Alcohol Awareness Course

Within 90 calendar days of the effective date of this Decision, respondent shall enroll in an alcohol awareness course approved by the Board. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the course not later than six (6) months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The alcohol awareness course shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

This decision shall become effective at 5 p.m. on June 21, 2017.

IT IS SO ORDERED this 22nd day of May, 2017



Michelle Anne Bholat, M.D., Chair
Panel B
Medical Board of California

**BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)	
)	
)	
)	Case No.: 8002014005022
JASBIR SINGH TIWANA, M.D.)	
)	OAH No.: 2016060163
)	
)	
)	
Respondent.)	

**ORDER OF NON-ADOPTION
OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written arguments as the parties may wish to submit directed to the question of whether the proposed penalty should be modified. The parties will be notified of the date for submission of such arguments when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Kennedy Court Reporters, 920 West 17th Street, Second Floor, Santa Ana, CA 92706. Their telephone number is (714) 835-0366.

To order a copy of the exhibits, please submit a written request to this Board.

In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written arguments.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
(916) 263-2442
Attention: Rozana Firdaus

Date: February 6, 2017



Michelle Anne Bholat, M.D., Chair
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
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Frederick M. Ray, Attorney at Law represented Jasbir Singh Tiwana, M.D. (Respondent).

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FINDINGS OF FACT

1. Complainant made the Accusation in her official.
2. The Board issued Physician's and Surgeon's Certificate number A 105296 to Respondent on August 20, 2008. At all times relevant hereto, the certificate was, and is now, in full force and effect. It has been renewed through August 20, 2018.
3. On November 18, 2014, in the Superior Court of the State of California, County of Ventura, case number 201408122 M A, Respondent was convicted on his plea of guilty to one count of violating Vehicle Code section 23152, subdivision (b), driving with a

blood alcohol content of 0.08 percent or higher, a misdemeanor. The Court suspended imposition of sentence and placed Respondent on formal probation for three years on condition that, among other things, he serve two days in the County Jail, less credit for two days served, that he pay fines and fees totaling \$3,923.36, and that he enroll in and complete a treatment program as directed by his probation officer. Respondent was required to, and did, enroll in and complete a first offender alcohol program. Because he satisfactorily complied with the terms of his formal probation, Respondent's probation was changed from formal to conditional and revocable release as of March 5, 2015.

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5. As more fully set forth below, Respondent, who is board certified in internal medicine, is not an alcoholic nor does he have a substance abuse disorder. This is his first and only conviction for any type of alcohol-related incident. He was extremely remorseful for his conduct, calling his arrest and being taken to jail "the worst experience I've ever had." He has not consumed any alcoholic beverages since the night of his arrest and plans never to drink again. At the hearing of this matter, he was soul-searchingly honest in his admission of the poor judgment he had used in driving after consuming alcohol. Respondent, a hospitalist at Los Robles Hospital and Medical Center (Los Robles), was on call the evening of his arrest. He stated that he would have been able to, and would have in fact, turned over any calls he may have gotten to another doctor in his group.

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family/relationship problems. He reports that prior to his arrest, he drank alcohol only rarely, and that since his arrest, he has been entirely abstinent from alcohol. His letters of reference from colleagues and friends indicate that he has been completely reliable and is highly regarded. ¶ . . . ¶]

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he has exhibited any of the objective signs of this disorder (“a great deal of time spent in obtaining the substance or recovering from its use”; “failure to fulfill major role obligations at work, school, or home; giving up or curtailing important social, occupational, or recreational activities because of alcohol use”; “continued alcohol use despite knowledge that it will exacerbate an ongoing psychological or physical problem”). Dr. Tiwana also denies ever having experienced the last two criteria for the diagnosis of an alcohol use disorder - tolerance and withdrawal.

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7. As Dr. Sandor noted, Respondent is well-liked and highly admired by his peers. In fact, Respondent’s skill and reputation are such that he has been elected Chairman of Medicine for 2017 to 2019 at Los Robles. Pedram Bagheri, M.D., wrote a letter on Respondent’s behalf (Exhibit 15) and also testified. His testimony was consistent with his letter, which contains the following passage:

Over the years working with Dr. Tiwana, I have seen nothing but relentless drive and honorable work ethic that has placed him amongst some of the most

well liked and respected physicians at Los Robles Hospital. He has made himself available to cover consecutive shifts on call during times that other team members have needed to call off, due to either personal or health reasons. Dr. Tiwana takes great pride and enjoyment from each relationship that he builds with our sick and vulnerable patients. I have heard nothing but praise and appreciation from my patients that have interacted with him.

8. Stephen Reidy, M.D., is Chief of Staff of Los Robles. He wrote a letter on Respondent's behalf (Exhibit H) which is particularly significant to this matter in light of Dr. Sandor's statement of the importance of colleagues being reporters of Respondent's sobriety. Dr. Reidy wrote, in part, "I am keenly familiar with [Respondent's] current circumstances. Dr. Tiwana has been on our staff since 2009 and has been a valued member of this medical community since that time. Dr. Tiwana and I have worked together for more than 5 years and I have served alongside him on a number of hospital committees. Through this duration, there has never been a situation in which Dr. Tiwana was impaired or where a patients' care was compromised due to an indiscretion on his part. Given that we service a fairly small medical community, any information to the contrary would have been revealed and publicized and I can assure you that it has not."

9. Gurdip S. Flora, M.D., a Diplomate of the American Board of Internal Medicine, with an added certification in pulmonary disease, has known Respondent for 15 years and is well aware of Respondent's conviction. He wrote a letter on Respondent's behalf (Exhibit G) which extolled Respondent's virtues as a kind, caring and exceedingly knowledgeable doctor. He ended his letter with the following passage: "He possesses knowledge, judgment, adaptability, technical education and personal characteristics to carry out the efficient and top quality practice of medicine. . . . I along with other members of the medical community support [him] as being exemplary in terms of his character, his dealings with the community and the institutions he is partnered with. There is no doubt in my mind that this well-rounded young physician is beyond reproach and is a fine, learned, compassionate, efficient, and skilled member of the Ventura County community."

10. Respondent offered a number of letters and emails from patients and hospital staff (Exhibit I), all of which praised Respondent. There is no need to quote from each letter. The following, from a patient, is typical, "Just wanted to provide some positive feedback regarding Dr. Tiwana. He is the best and on top of his patients. He keeps us well informed and great bedside manners with the patient and family. One of the best hospital doctors that we have dealt with!!!!!!!!!!!!!!!!!!!!!!"

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LEGAL CONCLUSIONS

1. The standard of proof in the matter of the discipline of a certificate of a physician and surgeon is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal--so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. Cause exists to discipline Respondent's certificate, pursuant to Business and Professions Code sections 2234, subdivision (a) and 2236, subdivision (a), and California Code of Regulations, title 16, sections 490 and 1360, in that Complainant established by clear and convincing evidence that Respondent has been convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon, as set forth in Findings 3 and 4.

3. Cause exists to discipline Respondent's certificate, pursuant to Business and Professions Code sections 2234, subdivision (a) and 2239, and California Code of Regulations, title 16, section 1360, in that Complainant established by clear and convincing evidence that Respondent used alcoholic beverages to an extent or in a manner dangerous to himself, another person, or the public, as set forth in Factual Findings 3 through 5.

4. Complainant established that cause for discipline exists, and the Board must acknowledge, to both the public and the medical community, that Respondent's actions on March 15, 2014, were not in compliance with the Business and Profession Code. A conviction for driving under the influence of alcohol shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770.) The question is the nature of the discipline to be imposed against Respondent's certificate.

5. Business and Professions Code section 2229, provides, in pertinent part:

(a) Protection of the public shall be the highest priority for the Division of Medical Quality, . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.

(b) In exercising his or her disciplinary authority an administrative law judge of the Medical Quality Hearing Panel, [or] the division, . . . shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee. . . .

6. Code section 2227, subdivision (a), provides:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section

11371 of the Government Code, . . . and who is found guilty, or who has entered into a stipulation for disciplinary action with the division, may, in accordance with the provisions of this chapter:

- (1) Have his or her license revoked upon order of the division.
- (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.
- (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.
- (4) **Be publicly reprimanded by the division.**
- (5) Have any other action taken in relation to discipline as part of an order of probation, as the division or an administrative law judge may deem proper. (Emphasis added.)

7. According to the criteria set forth in California Code of Regulations, title 16, section 1360.1, Respondent has established rehabilitation, as set forth in Factual Findings 6 through 10.

8. Pursuant to California Code of Regulations, title 16, section 1360.1:

When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license, certificate or permit shall consider the following criteria:

- (a) The nature and severity of the act(s) or offense(s).
- (b) The total criminal record.
- (c) The time that has elapsed since commission of the act(s) or offense(s).
- (d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
- (e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

9. On March 15, 2014, Respondent made a single error which resulted in a misdemeanor conviction for driving with a blood alcohol content of 0.08 percent or higher. Only an occasional drinker, he consumed alcoholic beverages at a family party and then attempted to drive home safely. The deleterious effect of the alcohol clouded Respondent's judgment as to his ability to drive home. Respondent had never before engaged in such conduct, and he has not done so since. He was devastated by his misconduct on that singular occasion, and was equally devastated by the prospect of it sullyng a hard-earned career

10. Respondent has complied with all terms and conditions of probation, but is scheduled to remain on probation until November 17, 2017. He no longer consumes alcoholic beverages. Respondent's conviction is an anomaly in his otherwise law-abiding life, and his commitment to continued abstinence suggests that recidivism is highly unlikely. Aside from the single misdemeanor conviction, Complainant presented no evidence of any impediments to Respondent's ability to practice medicine in a proper and safe manner.

11. Nevertheless, some type of discipline is appropriate to ensure that Respondent's professional life remains as untainted as it was before his crime. Business and Professions Code section 2227 does not limit the Board to imposing revocation, suspension or probation. Although the Board's scope of discipline includes those remedies, it also includes issuance of a public reprimand, pursuant to Business and Professions Code section 2227, subdivision (a)(4).

12. The purpose of a disciplinary action such as this one is to protect the public, and not to punish the licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) While some form of discipline is warranted to ensure public safety and awareness, in this case, neither revocation nor Board oversight via probation is appropriate. License revocation or suspension would be unduly punitive, and the probation conditions set forth in the disciplinary guidelines (e.g., evaluations, biological fluid testing, and group support meetings) are unnecessary under the circumstances presented

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here. In light of Respondent's single conviction and the rehabilitative evidence proffered at the hearing, a public reprimand will best protect the public without imposing overly harsh and punitive discipline on Respondent.

ORDER

Jasbir Singh Tiwana is hereby reprimanded under Business and Professions Code section 2227, subdivision (a)(4).

DATED: December 8, 2016

DocuSigned by:
Ralph B. Dash
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RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO February 19 20 16
BY R. Firdaus ANALYST

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 JASBIR SINGH TIWANA, M.D.

14 2060-D Avenida de los Arboles, #765
Thousand Oaks, California 91362

15 Physician's and Surgeon's Certificate A105298,
Respondent.

Case No. 800-2014-005022

A C C U S A T I O N

16 Complainant alleges:

17 **PARTIES**

18 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
19 capacity as the Executive Director of the Medical Board of California ("Board").
20

21 2. On August 20, 2008, the Board issued Physician's and Surgeon's Certificate number
22 A105298 to Jasbir Singh Tiwana, M.D. ("Respondent"). That license was in full force and effect
23 at all times relevant to the charges brought herein and will expire on August 31, 2016, unless
24 renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

28 4. Section 2004 of the Code states, in pertinent part:

1 “The board shall have the responsibility for the following:

2 “(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
3 Act.

4 “(b) The administration and hearing of disciplinary actions.

5 “(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
6 administrative law judge.

7 “(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
8 disciplinary actions.

9 “(e) . . . (i).”

10 5. Section 2230.5 of the Code provides, in pertinent part:

11 “(a) Except as provided . . . any accusation filed against a licensee pursuant to Section
12 11503 of the Government Code shall be filed within three years after the board, or a division
13 thereof, discovers the act or omission alleged as the ground for disciplinary action”

14 “(b) . . . (f).”

15 6. Section 2227 of the Code provides, in pertinent part:

16 “(a) A licensee whose matter has been heard by an administrative law judge of the Medical
17 Quality Hearing Panel as designated in Section 11371 of the Government Code . . . and who is
18 found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in
19 accordance with the provisions of this chapter:

20 “(1) Have his . . . license revoked upon order of the board.

21 “(2) Have his . . . right to practice suspended for a period not to exceed one year upon order
22 of the board.

23 “(3) Be placed on probation and be required to pay the costs of probation monitoring upon
24 order of the board.

25 “(4) Be publicly reprimanded by the board. The public reprimand may include a
26 requirement that the licensee complete relevant educational courses approved by the board.

27 “(5) Have any other action taken in relation to discipline as part of an order of probation, as
28 the board or an administrative law judge may deem proper.

1 "(b)"

2 7. Section 2239 of the Code states, in pertinent part:

3 " (a) The use . . . of alcoholic beverages, to the extent, or in such a manner as to be
4 dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that
5 such use impairs the ability of the licensee to practice medicine safely or more than one
6 misdemeanor . . . involving the use, consumption . . . of any of the substances referred to in this
7 section, or any combination thereof, constitutes unprofessional conduct. The record of the
8 conviction is conclusive evidence of such unprofessional conduct.

9 " (b) A . . . plea of nolo contendere is deemed to be a conviction within the meaning of this
10 section. The Division of Medical Quality may order discipline of the licensee in accordance with
11 Section 2227 . . . when the time for appeal has elapsed or the judgment of conviction has been
12 affirmed on appeal or when an order granting probation is made suspending imposition of
13 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
14 Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty,
15 or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or
16 indictment."

17 8. Section 2236 of the Code states, in pertinent part:

18 "(a) The conviction of any offense substantially related to the qualifications, functions, or
19 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
20 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive
21 evidence only of the fact that the conviction occurred.

22 "(b)"

23 "(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours
24 after the conviction, transmit a certified copy of the record of conviction to the board. The
25 division may inquire into the circumstances surrounding the commission of a crime in order to fix
26 the degree of discipline or to determine if the conviction is of an offense substantially related to
27 the qualifications, functions, or duties of a physician and surgeon.

28 "(d) A plea . . . of nolo contendere is deemed to be a conviction within the meaning of this

1 section The record of conviction shall be conclusive evidence of the fact that the conviction
2 occurred.”

3 9. California Code of Regulations, title 16, section 1360, states:

4 “For the purposes of denial, suspension or revocation of a license, certificate or permit
5 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
6 considered to be substantially related to the qualifications, functions or duties of a person holding
7 a license, certificate or permit under the Medical Practice Act if to a substantial degree it
8 evidences present or potential unfitness of a person holding a . . . certificate . . . in a manner
9 consistent with the public health, safety or welfare. Such crimes or acts shall include but not be
10 limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or
11 abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.”

12 10. Section 490 of the Code state, in pertinent part:

13 “(a) In addition to any other action that a board is permitted to take against a licensee, a
14 board may suspend or revoke a license on the ground that the licensee has been convicted of a
15 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
16 or profession for which the license was issued.

17 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
18 discipline a licensee for conviction of a crime that is independent of the authority granted under
19 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
20 of the business or profession for which the licensee's license was issued.

21 “(c) A conviction within the meaning of this section means a . . . conviction following a
22 plea of nolo contendere. Any action that a board is permitted to take following the establishment
23 of a conviction may be taken when . . . an order granting probation is made suspending the
24 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4
25 of the Penal Code.

26 “(d) The Legislature hereby finds and declares that the application of this section has been
27 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
28 554, and that the holding in that case has placed a significant number of statutes and regulations

1 in question, resulting in potential harm to the consumers of California from licensees who have
2 been convicted of crimes. Therefore, the Legislature finds and declares that this section
3 establishes an independent basis for a board to impose discipline upon a licensee, and that the
4 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
5 constitute a change to, but rather are declaratory of, existing law."

6 VEHICLE CODE SECTION

7 11. Vehicle Code Section 23152, subdivisions (a) and (b), provide, in pertinent part:

8 "(a) It is unlawful for any person who is under the influence of any alcoholic beverage or
9 drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle."

10 "(b) It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in
11 his . . . blood to drive a vehicle."

12 FIRST CAUSE FOR DISCIPLINE

13 (Use of Alcohol to an Extent Dangerous to Self or Others)

14 12. Respondent Jasbir Singh Tiwana, M.D. is subject to disciplinary action under
15 Business and Professions Code section 2239 in that he was convicted of driving a motor vehicle
16 under the influence of alcohol, in violation of Vehicle Code section 23152, subdivision (b) and
17 used alcohol to an extent that was dangerous to himself or others. The circumstances are as
18 follows:

19 13. On or about May 1, 2014, a Misdemeanor Complaint entitled *The People of the State*
20 *of California v. Jasbir Singh Tiwana* was filed in the Ventura Superior Court, bearing case
21 number 2014008122, charging Respondent with one count of driving under the influence of
22 alcohol, in violation of Vehicle code section 23152, subdivision (a), and one count of driving
23 under the influence of alcohol with a blood alcohol level of 0.08 or more, in violation of Business
24 and Professions Code section 23152, subdivision (b). The circumstances were as follows:

25 14. On or about March 15, 2014, at approximately 10:56 p.m., Respondent was driving
26 his 2013 BMW northbound in the number two lane of the 23 Freeway. A police officer was
27 traveling behind Respondent, and observed the driver side tires of Respondent's vehicle moved
28 from the number two lane across the white dotted line and into the number one lane.

1 Respondent's vehicle then move back into the number two lane and the passenger side tires
2 crossed the solid white line and completely into the right shoulder. Respondent's vehicle then
3 moved back into the number two lane and drifted over the white dotted line again of the number
4 one lane. As Respondent's vehicle began to exit the freeway, it crossed over the gore point and
5 entered the off-ramp. The officer activated his overhead lights to conduct a traffic stop for lane
6 straddling/unsafe lane change. Respondent stopped his vehicle half way down the off-ramp in
7 the left turn lane. The officer tried to get Respondent's attention to move to the right, but he was
8 unsuccessful.

9 The officer exited his vehicle and approached Respondent's vehicle. Upon contacting
10 Respondent, the officer noticed that his eyes were red and watery and he could smell an odor of
11 alcohol coming from inside the vehicle. When asked, Respondent initially denied consuming any
12 alcohol and told the officer that he was a doctor and was "on-call" tonight. Respondent handed
13 the officer his Medical Board identification card and told him that he helps save people just like
14 the officer and he was almost home. The officer checked Respondent's eyes for nystagmus¹ and
15 noticed an angle of onset at approximately 35 degrees. The officer again asked how much
16 Respondent had to drink. Respondent told the officer that he drank one glass of wine with dinner
17 approximately 30 to 40 minutes earlier. The officer then had Respondent perform field sobriety
18 tests (FST)² in order to determine if Respondent was safe to drive.

19 After conducting a series of FSTs the officer suspected that Respondent was possibly under
20 the influence of alcohol and asked him to take a preliminary breath test, also known as a PAB or
21

22 ¹ Nystagmus is the involuntary rapid movement of an eye either horizontally or vertically. Alcohol
23 consumption can cause this condition. Horizontal Gaze Nystagmus (HGN) testing is a field sobriety test recognized
24 by the National Highway Traffic & Safety Administration of the federal government. The HGN test involves the
25 police officer having the driver follow a pen with his eyes. The police officer is looking for specific responses from
26 the eyes that show the driver is under the influence. To conduct the test, the police officer will hold a pen or finger
approximately 12 inches from the driver's face at eye level and move it back and forth parallel to the ground in front
of the driver. The police officer looks for three indicators, namely lack of smooth pursuit, onset of nystagmus before
45 degrees and distinct nystagmus at maximum deviation. Each of the above three indicators counts as one point in
the test and a total of four points is considered as indication of impairment.

27 ² Field sobriety tests, abbreviated as FST, are a battery of tests performed during a traffic stop in order to
28 determine if a driver is over the legal Blood Alcohol Concentration (BAC) limit.

1 PAS.³ Respondent provided two samples. The first sample was collected at 11:20 p.m. and the
2 second sample was collected at 11:22 p.m. Both samples resulted in a BAC of 0.11, well over the
3 legal limit. Thereafter, Respondent was arrested for driving under the influence of alcohol.
4 Respondent pleaded with the officer not to take him to jail because he was "on-call" at UCLA
5 that night. Thereafter, Respondent was transported to the police station where he provided two
6 additional breath samples which registered on a breathalyzer as 0.11 BAC at 11:30 p.m. and
7 11:33 p.m. respectively.

8 15. On November 18, 2014, Respondent entered a plea of no contest to Count Two, driving
9 under the influence of alcohol with a BAC of 0.08 or more, in violation of Vehicle Code section
10 23152, subdivision (b). The court dismissed Count One, suspended the imposition of sentence,
11 and ordered Respondent to: be placed on 36 months of formal probation; enroll and participate in
12 and successfully complete a 3-month first offender alcohol program; pay a total fine in the
13 amount of \$2,377, along with other fines and penalties; serve two days in jail with credit for time
14 served; and to obey all laws, among other things.

15 16. On or about March 11, 2015, Respondent's formal probation was modified and
16 reduced to informal probation for the remainder of his probationary term.

17 17. On September 29, 2015, Respondent was interviewed by the Board regarding the
18 facts and circumstances of his arrest and conviction. During the interview, he admitted that he
19 had actually consumed two glasses of wine the evening of March 15, 2014, and was on "phone
20 call" duty that evening with UCLA. He stated that he told the officer that he was "on-call" at
21 UCLA in an attempt to get out of the situation so the officer would let him go. Respondent
22 further acknowledged that driving, after consuming alcohol, was a dangerous thing to do, and that
23 he was risking lives on the road and risking pretty much everything that he has.

24
25
26 ³ A preliminary alcohol breath test, abbreviated as PAB or PAS, is a preliminary alcohol screening (PAS)
27 used by law enforcement officers for an on the spot determination of the blood alcohol concentration (BAC) level of
28 an individual suspected of driving under the influence (DUI). The test is performed using a handheld breath testing
device, commonly known as a breathalyzer, that gives an immediate and fairly accurate measure of an individual's
BAC level.

1 **SECOND CAUSE FOR DISCIPLINE**

2 (Conviction of a Crime Substantially Related to the Practice of Medicine)


3 18. By reason of the facts set forth above in Paragraphs 13 through 17, Respondent is
4 subject to disciplinary action under Business and Professions Code section 2236 in that he was
5 convicted of a crime substantially related to the qualifications, functions and duties of his
6 profession as a physician and surgeon.

7 **PRAYER**

8 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Medical Board of California issue a decision:

- 10 1. Revoking or suspending Physician's and Surgeon's Certificate Number A105298,
11 issued to Respondent Jasbir Singh Tiwana, M.D.;
- 12 2. Revoking, suspending or denying approval of his authority to supervise physician
13 assistants, pursuant to section 3527 of the Code;
- 14 3. If placed on probation, ordering him to pay the Board the costs of probation
15 monitoring; and
- 16 4. Taking such other and further action as deemed necessary and proper.

17
18 DATED: February 19, 2016


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

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